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OUR RELATIONS WITH JAPAN¹

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The rise of Japan within the span of one generation from the condition of a weak feudalized state, shut off from all contact with the western nations, to the position of a world power dominated by a desire to shape the destinies of Eastern Asia and ready to dispute with other powers the control of the Pacific, constitutes one of the most dramatic stories in the whole range of history. The rapid assimilation of western ideas and the successful appropriation of all the material elements of western civilization are without a parallel.

Dr. Nitobé, whom we are glad to recognize not only as a great scholar but as a great writer of English, in his remarkable book, *Bushido, the Soul of Japan*, describes with great power and beauty the idealism of the Samurai, or gentlemen of Japan of a generation ago, but while the old spirit still flashes out occasionally as in the spectacular, and to us meaningless, suicide, on the occasion of the funeral of the late Emperor, of one of his most distinguished subjects, General Nogi, we cannot help believing that the Japanese have outgrown their idealism; that they cast it aside when they discarded their mediaeval weapons and abandoned their self-complacent exclusivism. The Japanese are the greatest materialists in the world today, for it is the material elements of western civilization that they have appropriated and to which they owe their success in two wars. A nation of materialists, fired with ambition and military ardor, are going just as far in their aggressiveness as sheer force will carry them. That is why Japan with her present ambitions is so generally regarded as a menace to the peace of the world.

¹This article was delivered in substantially its present form as the Convocation Address at the University of Chicago, August 29, 1913.

The growth of the Japanese naval power is a matter of vital interest to the United States, because the United States and Japan are the two leading powers of the Pacific. It is not likely that Great Britain, in spite of her possessions in British Columbia, Australia, and New Zealand, will ever contend for primacy in that ocean. She has naval problems that are too pressing in other quarters of the globe. Russia has received a check that will delay her naval development for many years to come. While China may some day emerge to challenge the position of Japan and the United States, it is not likely that any of us will live to see it. At present therefore the United States and Japan are the two rivals for naval supremacy in the Pacific.

The leading public men of Japan and the United States are continually assuring us that the official relations between the two countries are, and always have been, most cordial; and that while the United States forced western civilization upon Japan at the mouth of the cannon, the Japanese have always been profoundly grateful to us for so doing; that the only monument ever erected on their soil to a foreigner perpetuates the memory of Commodore Perry on the spot where he landed—the spot, the inscription declares, “on which the modern civilization of our Japanese Empire had its beginnings.” In the great transformation which Japan has undergone she has drawn more largely on the United States than on any other nation. This is because the United States has been pre-eminently a successful nation and Japan worships success. Many of her leading men were educated in this country. The United States furthermore took the leading part in freeing Japan from the burden and humiliation of ex-territoriality and welcoming her into the family of nations with full international status.

Nations however are no more mindful of past favors than are individuals. Traditional friendship cannot always stand the strain of changed conditions and conflict of interest. No one can deny that rivalry and animosity have arisen since the Russo-Japanese war. It is claimed, it is true, that this is largely due to yellow journalism in America; that certain interests have been assiduously fomenting discontent for commercial gain; that

advocates of a large navy annually fill the press with "dope" on the imminence of war with Japan; and that organized labor on the Pacific Coast, in order to maintain the western standard of living, deliberately keeps alive the fires of race antagonism. All this may be true in a measure, but nevertheless the aggressive attitude of Japan in Manchuria and in California and the development of race antagonism in this country are factors that cannot be ignored.

As one of Japan's chief ambitions today is to shape the destinies of China, it will be well for us to review briefly the policy of the United States with reference to China since the threatened partition of that country fifteen years ago. Although the downfall of China had been freely predicted after the revelation of her inherent weakness in the war with Japan, the suddenness with which she fell a prey to the greed of the western nations was the sensation of the closing years of the nineteenth century. The rivalry of the European powers in the commercial exploitation of China in 1897-98 served to emphasize, more than ever before, the fact that commerce has become the greatest of all political interests, and that the primary object of diplomacy is the extension of trade relations and the maintenance of foreign markets. To the attainment of these ends armies and navies are mere accessories.

The occupation of Kiao-Chau by Germany in 1897, followed a few months later by a ninety-nine year lease and important concessions in the Shantung Peninsula, the Russian lease of Port Arthur in 1898, the British lease of Wei-Hai-Wei, and the French occupation of Kwang-Chau, all coming within a few months of each other, are now too well known to be recalled in detail. Having established themselves in strategic positions on the shores of the Gulf of Pechili and holding China by the throat, so to speak, Germany, Russia, and England proceeded to dictate the terms they desired. In addition to cessions of territory, extensive concessions for the construction of railways and mining privileges were granted to each power in its particular "sphere of influence," in utter disregard of the "most-favored-nation" clauses of existing treaties. The movement for the par-

tition of China was well under way when the United States went to war with Spain and the Philippine Islands came within its grasp. To seize a "sphere of influence" in China seemed utterly repugnant to the traditional policy of the United States, and would not have been acquiesced in by the Senate. But the occupation of the Philippines, it was thought, would give a point of vantage from which the American government could exercise a decisive influence in the Orient. Such considerations were probably the main factor in President McKinley's decision to retain the Philippines.

Americans generally are under the impression that Secretary Hay's "open-door" policy in China, of which we heard so much a few years ago, was a great success. As I entered the imposing John Hay Memorial Library in Providence a few weeks ago I read with a mental reservation this inscription: "To John Hay who maintained the open door and the Golden Rule." The policy for which he stood was indeed a great policy, nobly conceived and nobly proclaimed, but it was not successfully maintained. The open-door policy was first outlined by Secretary Hay in notes dated September 6, 1899, and addressed to London, Berlin, and St. Petersburg. Each of the powers addressed was requested to give assurances and to make declarations to the effect: (1) that it would not interfere with any treaty port or vested interest in its so-called "sphere of influence;" (2) that the Chinese tariff should continue in force in such sphere and continue to be collected by Chinese officials; and (3) that it would not discriminate against other foreigners in the matter of port dues or railroad rates. Similar notes were later addressed to France, Italy, and Japan. England alone expressed her willingness to sign such a declaration. The other powers, while professing thorough accord with the principles set forth by Mr. Hay, avoided committing themselves and no such declaration was ever made. Mr. Hay made a skilful move, however, to clinch matters by informing each of the powers to whom the note had been addressed, that in view of the favorable replies from the other powers, its acceptance of the proposals of the United States was considered "as final and definitive."

The real intentions of the powers as contrasted with their professions became apparent in the discussions that soon arose as to the status of consuls in the various spheres of influence. Japan claimed that sovereignty did not pass with a lease and that even if China should surrender jurisdiction over her own people the lessee governments could not acquire jurisdiction over foreigners in leased territory. This position was undoubtedly correct if the territorial integrity of China was really to be preserved, but after negotiations with Russia and the other powers concerned, the United States unfortunately felt compelled to concede the vital point, for on February 3, 1900, Mr. Hay wrote to Minister Conger that "the United States consuls in districts adjacent to the foreign leased territories are to be instructed that they have no authority to exercise extra-territorial consular jurisdiction, or to perform ordinary non-judicial consular acts within the leased territory under their present Chinese exequaturs."

Application was then made to the European powers for the admission of American consuls in the leased territories for the performance of the ordinary consular functions, but in no case were they to exercise extra-territorial jurisdiction within a lease, although in some cases they retained this power in the adjacent territory or sphere of influence.

The rapid exploitation of China, involving as it did the introduction of new ideas and new methods and much that was offensive among the most conservative of all peoples, naturally aroused an intense anti-foreign sentiment and led to the Boxer uprising. Events moved with startling rapidity, and United States troops took a prominent part with those of England, France, Russia, and Japan in the march to Peking for the relief of the legations. In a note to the powers, July 3, 1900, Secretary Hay, in defining the attitude of the United States on the Chinese question, said: "The policy of the government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire."

During the long negotiations that followed the occupation of Peking by the powers, the United States threw the weight of its influence on the side of moderation, urging the powers not to impose too many burdens on China and declaring that the only hope for the future lay in a strong, independent, responsible Chinese government. Mr. Hay displayed great skill in giving to the world at a critical moment a definite expression of policy, and in urging the powers to observe it.

Contrary to the terms of the final protocol, however, Russia retained in Manchuria the troops concentrated there during the Boxer movement, with a view to exacting further concessions from China. The seriousness of the situation led England and Japan to sign a permanent defensive agreement January 30, 1902, recognizing England's interest in China and Japan's in Korea, and providing that if either party should be attacked in defense of its interests the other party would remain neutral, unless a third power joined in, in which event the second party would come to the assistance of the first. A formal protest made by the United States, February 1, against some of the demands Russia was making on China led Russia to conclude that the American government had an understanding with England and Japan, but Mr. Hay gave the assurance that he had known absolutely nothing about the Anglo-Japanese agreement until it was made public. He succeeded in securing from Russia, however, a definite promise to evacuate Manchuria by October 8, 1903, which was the date set in the Russo-Chinese Manchurian convention of April 8, 1902. As the time for withdrawal drew near, Russia began imposing new conditions on China, and deliberately misrepresented to the United States the character of the new proposals.

After the suppression of the Boxer uprising China had agreed to extend the scope of her commercial treaties with the powers. When the negotiation of a new treaty was begun by Consul-General Goodnow at Shanghai, the United States demanded that at least two new ports in Manchuria be opened to foreign trade and residence. The Chinese commissioners declined to discuss this subject, on the alleged ground that they had no instructions

to do so. It was evident that there was secret opposition somewhere, and on May 7, 1903, Mr. Conger reported that it came from the Russian chargé d' affaires. Later he secured a written acknowledgment from the Chinese government that such was the case. Meanwhile Russia was giving positive assurances at Washington that she was not opposed to open ports and consulates in Manchuria. Mr. Hay then appealed with the utmost directness to the Russian government, stating that the negotiations with China were substantially terminated, with the exception of the question of the open ports in Manchuria, and that the Chinese government still claimed that it was prevented from coming to an agreement on this point by Russian opposition; he requested to know whether instructions had been sent to the Russian minister at Peking, and, if not, that prompt action be taken. The Russian government promised to send the necessary instructions, but when Mr. Conger approached the Russian minister at Peking, the latter replied that the matter had been taken out of his hands, and that he had been instructed to await the result of the discussion of the question at Washington.

After this sort of evasion had gone on for a month, on July 14, a definite answer was at length received from Russia, in which she declared that it had never entered into her views to oppose the opening of certain cities in Manchuria to foreign commerce, but that this declaration did not apply to Harbin, one of the cities selected by the United States, which was situated within the railway zone, and therefore was not under the complete jurisdiction of China. A copy of this note was shown to the Chinese government, which finally agreed to insert in the treaty a provision for the opening of two ports outside the Russian zone. The United States agreed to this arrangement, and on October 8 the treaty was signed, and Mukden and Antung named as the open ports. By thus excluding the United States from the railway zone, Russia again succeeded in thwarting the efforts of Mr. Hay to establish the principle of the open door. "The administrative entity" of China was utterly ignored. If the United States had had a stronger navy in the Pacific, Mr. Hay's diplomacy might have been more effective.

Japan now stepped into the breach and took up the fight in Manchuria. The presence of Russian troops on the soil she had won in the war with China and lost through Russian diplomacy was more than she could stand. After long negotiations, Japan presented to Russia, on January 16, 1904, an ultimatum in which she stipulated: (1) that Japan would recognize Manchuria as being outside her sphere of interest, provided Russia would respect the territorial integrity of China in Manchuria; (2) that Russia would not impede Japan or other powers in the enjoyment of rights and privileges acquired by them in Manchuria under existing treaties with China; (3) that Russia would recognize Korea as being outside her sphere of interest. After waiting for what she considered a reasonable time for a reply, Japan withdrew her minister from St. Petersburg, and on February 10, 1904, issued a formal declaration of war. The memorable war that followed revolutionized the political situation in the Far East.

The services of President Roosevelt to the cause of peace in bringing Russia and Japan to a conference within the United States in 1905 have received wide recognition, and doubtless constitute a notable diplomatic achievement, though it is now an open secret that Japan, realizing that her resources were well-nigh exhausted, made the first move and asked Roosevelt to intervene. Unfortunately the President was not satisfied with having brought the commissioners together, but kept in close touch with them and took a too active part in the negotiations. In the treaty of Portsmouth Russia and Japan agreed to evacuate Manchuria with the exception of the Liaotung peninsula; the Russian leases of Port Arthur, Talienshan, and adjacent territories and territorial waters were to be transferred, with the consent of China, to Japan; the Southern Manchurian Railway was transferred to Japan, while the Eastern Railway in Northern Manchuria was retained by Russia.

While the treaty of Portsmouth was being negotiated, England and Japan signed a new treaty of alliance for the protection of England's interests in India and Japan's interests in Korea, and also for the preservation of Chinese territorial integrity and the principle of commercial equality of all nations.

During the war between Russia and Japan the sympathies of the American people were very largely with Japan, partly because her resources were more limited, and partly because the underhand methods of Russian diplomacy had created an unfavorable impression. But no sooner had the Russian plenipotentiaries set foot on American soil than Count Witte drew to himself the sympathetic interest of the public. This was due in part to his striking personality, and in part to the realization that the odds were greatly against him. After each session of the commission he talked freely to the group of reporters who gathered around him, while the Japanese envoys retired to their rooms and denied themselves to all newspaper men. Public opinion undoubtedly helped the Russian negotiations. The result was that the Japanese envoys went home somewhat disgruntled, and with at least an outward resentment, because they had failed to get an indemnity, and had been forced to relinquish their claims to half of the island of Saghalien.

Japan's great military triumph had again, as in 1895, been followed by a diplomatic defeat, and for this defeat Japanese public opinion held President Roosevelt responsible. Their commissioners had failed to get any part of the \$600,000,000 indemnity which their government had instructed them to demand, and they felt it necessary to shift the burden from their own shoulders. However this may be, the strained relations between the United States and Japan date from the negotiations at Portsmouth. That President Roosevelt acted for the best interests of Japan in urging them at the last to forego all indemnity may readily be admitted, for the opinion was expressed by many of the foreign military critics who were sent to observe military operations, that if the war had continued six weeks longer the tide would have turned in favor of Russia. Japan was getting farther and farther from her base of supplies every day and Russia was drawing nearer to hers. The Japanese authorities knew this perfectly well, but they did not care to admit it.

The Russo-Japanese war was scarcely at an end before an extensive boycott of American goods was organized in Northern China. The nominal, and perhaps the real reason for this anti-

American outburst was the harsh treatment accorded Chinese in the United States. Fortunately the Chinese government succeeded in checking the boycott, but not until it had caused heavy losses to Americans. There was a strong suspicion throughout the United States that this movement was instigated by Japanese agents with the object of supplanting American by Japanese commerce.

During the period of the Boxer uprising the United States more than any other power was, as we have seen, anxious to maintain the integrity of the Chinese Empire and the independence of the Chinese government. Japan was at that time in thorough sympathy with that purpose. What does Japan think of the open-door policy today? The situation in the East now, as at the beginning of the Russian war, hinges on Manchuria. Let us review briefly the rapid advance made by Japan in Manchuria since the Russian War. By the treaty of Portsmouth the Southern Railway of Manchuria was ceded to Japan while Russia retained the Eastern Railway. Immediately after the signing of the treaty of Portsmouth it is said that Marquis Ito, who represented the conservative Japanese party, proposed a lease of the Southern Railway to Edward H. Harriman and a group of American financiers in order to place America as a buffer between Russia and Japan. This tentative offer to Harriman was made before Komura, the principal Japanese negotiator of the Portsmouth treaty, left the United States. When, however, Komura reached Tokio he at once opposed the Ito-Harriman agreement, and it was abandoned. From this period dates the new Japanese policy. Komura and Katsura, the representatives of the war party, insisted that Japan must retain all she had acquired from Russia in Manchuria and use it as a base for Japanese expansion on the continent. The new Japanese policy involved a division of Chinese sovereignty in Manchuria and a full recognition of the exclusive right of administration which Russia had claimed in the railway zones under her agreement of 1896 with China. Japan proposed to recognize Russian administration in Northern Manchuria, provided Russia would recognize Japan's administration in the Southern Railway zone, but these overtures were declined by Russia.

At the close of the war Russia had likewise made an effort in Wall Street to lease her railways in Northern Manchuria to American financiers, but this effort proved fruitless. Japan at once saw that the lease of Russia's railways to Americans would mean the strengthening of Chinese sovereignty in Manchuria and the defeat of her own schemes. She therefore did everything she could to prevent it. As Russia persisted, however, in rejecting the Japanese proposals, Japan began, under the principle of the open door, to push Japanese commerce into Northern Manchuria. It was at this juncture that the exchange of notes between Japan and the United States (November 30, 1908) occurred, in which Japan formally reasserted her adherence to the open-door policy. This was a clever move, because it secured American support for Japanese aggression. Marquis Ito, who was opposed to Japanese expansion until the nation could recuperate from the effects of the war, and who to the last denied that Japan would annex Korea, was finally sent to Harbin to confer with the Russian Minister of Finance. He was forced by his political opponents to become the agent for carrying out their policy, but he was assassinated at Harbin before making known the object of his mission. The United States had meanwhile been watching the situation with uneasiness, and Mr. Knox in a desperate effort to rehabilitate the open-door policy, made the famous "neutralization proposal," which was that the railways of both Russia and Japan should be purchased and neutralized by the powers. Both Russia and Japan rejected Mr. Knox's solution of the question. Russia had now to face the issue of losing control in Manchuria or coming to an agreement with Japan. She chose the latter alternative and yielded to the proposals which Japan had been urging for four years. On July 4, 1910, a convention between Russia and Japan was signed at St. Petersburg. The following are the most important provisions: "(2) Each of the high contracting parties undertakes to maintain and respect the *status quo* in Manchuria resulting from all the treaties, conventions, and other arrangements concluded up to this date either between Russia and Japan or between those two powers and China. Copies of the said arrangements

have been exchanged between Russia and Japan. (3) In the event of anything arising of a nature to threaten the *status quo* mentioned above, the two high contracting parties shall enter each time into communication with each other with a view to coming to an understanding as to the measures they may think it necessary to take for the maintenance of the said *status quo*."

The comments made at the time by the American press, and even by government officials, show how little the real situation was understood. By the *status quo* in Manchuria Americans thought was meant the open-door policy, but the treaty speaks of a different *status quo*—"the *status quo* in Manchuria resulting from all the treaties, conventions, and other arrangements concluded up to this date either between Russia and Japan or between those two powers and China." The documents referred to included the railway concessions made by China to Russia in 1896 and in 1898, and communicated by Russia to Japan in accordance with a secret agreement made at Portsmouth, of which the United States was apparently unaware.

While Japan vigorously opposed the division of Chinese sovereignty when Russia alone was the aggressor, she now adopted that principle as her chief policy of state. The annexation of Korea and the understanding with Russia in Manchuria are great triumphs for Japanese diplomacy. Japan's repudiation of the open-door policy in Manchuria, however, has been a great strain on her relations with the United States and a potent factor in keeping alive the war scare. However, the situation is not as bad as one might suppose at first sight. Japan wants peace in order to recuperate from the financial embarrassment of the Russian war. She has, therefore, acquiesced in the rehabilitation of China. The thing she most feared was the military occupation of China by some of the great powers. That possibility seems now removed by the Chinese revolution and the organization of the republic. Although uneasy about the appearance in the East of republican institutions, which may soon undermine the Mikado's throne, Japan has outwardly, at least, extended her sympathy and encouragement to the Chinese revolutionists. It is worthy of note that the revolutionary disturbances occurred in the region where most of

the foreign capital is invested and drew the attention of Europe and America to the spot, thus diverting attention from Manchuria, where Japan was making rapid advances. As far as the Chinese revolution is concerned, Japan and the United States are now in accord. But, Japan is playing for time, and leaving expansion outside of Manchuria to the future course of events. The outcome is altogether too problematical for the present discussion.

Meanwhile the attitude of the Japanese government with reference to its subjects in California appears to most Americans to be one of aggression. The demands of the Japanese government with reference both to the school question and to alien land-holding have raised questions that are not only delicate from a diplomatic point of view, but that are difficult for the American government to handle from a constitutional point of view.

During the latter part of October, 1906, the American public suddenly became aware of the fact that an active anti-Japanese agitation was in progress in California. The San Francisco school question created intense excitement throughout the country, and the press was filled with discussions as to whether the United States had the constitutional power to make a treaty which would override the laws of a state. While the old question of state-rights was thus being hotly debated, the really significant question as to whether the Japanese treaty conferred school privileges was almost ignored. The treaty guaranteed to Japanese subjects in the United States, in "whatever relates to rights of residence," the same privileges, liberties, and rights as native citizens, or citizens or subjects of the most favored nation. The question as to whether the right to attend the public schools is a right of residence is open to debate; but even granting that it is, California did all that could have been justly demanded of her under the treaty when she furnished equal, if not identical, school facilities.

But the school question was not the real question at issue; the San Francisco school authorities could easily have excluded Japanese men from association with little children in the lower grades, which was the main ground of complaint, by the adoption of an age limit which is usual in most city schools. The real

question was the exclusion of Japanese laborers from competition with American laborers, and the assignment of Japanese children to a separate school was merely an incident in a general agitation against Japanese begun by the labor unions of California.

The question was adjusted, temporarily at least, without being pushed to a conclusion in the courts. Japan declared that she did not wish her subjects to come in large numbers to the United States, and for some time it had been the practice of the Japanese government not to issue passports to laborers desiring to come to the United States, though passports were issued for Hawaii, Canada, and Mexico, the holders of which in many cases entered this country. Relying upon a continuance of this policy, Congress inserted in the immigration act of February 20, 1907, a clause authorizing the President to exclude from the continental territory of the United States holders of passports issued by any foreign government to its citizens to go to any country other than the United States or to the insular possessions of the United States or to the Canal Zone. March 14, 1907, the President issued an executive order directing that Japanese laborers coming from Mexico, Canada, or Hawaii be refused permission to enter the continental territory of the United States. The San Francisco school board thereupon agreed to admit Japanese children to the ordinary schools under certain conditions of age and ability to use the English language.

The California school question proved, however, to be a mere incident in the development of a strong opposition to Japanese immigration to the Pacific slope. This anti-Japanese feeling has again manifested itself in the land legislation enacted by the legislature of California in 1913. The law, as finally passed, grants the right to acquire agricultural land to all aliens who are eligible to American citizenship, and grants to other aliens the right to acquire land in a manner and for the purpose prescribed in any treaty now existing between their government and the government of the United States. The treaty between the United States and Japan signed at Washington, February 1, 1911, contains the following provisions in regard to the holding of property: "The citizens or subjects of each of the high contracting

parties shall have liberty to enter, travel, and reside in the territories of the other, to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses, and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established."

The failure of this treaty to specify agricultural lands while referring specifically to real estate used for residential or commercial purposes, would appear to make it conclusive that the Japanese have no right under the treaty to hold agricultural lands. It is furthermore claimed that the Japanese government does not grant to Americans in Japan the rights which it claims for its subjects in California. This is certainly true of certain districts, in which foreigners are by statute expressly declared incapable of owning land.

Neither President Wilson nor Mr. Bryan has admitted, so far as I have seen, that the California law is a violation of the treaty, though they urged moderation on the part of the California legislature because of the apparent discrimination against Japanese as compared with other aliens. Technically, California appears to have assumed an unimpeachable legal position in expressly safeguarding the treaty rights of aliens. It remains for the federal courts, in case Japan continues to press her protest, to determine whether the law violates the treaty or not. There is no doubt in my mind that if it should be ascertained by the Supreme Court of the United States that the treaty rights of Japanese had been violated, the California law would have to give way to the treaty. The Constitution of the United States declares (Article 6, clause 2): "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

There is no limitation expressly imposed by the constitution on the treaty-making power. Some writers claim that a treaty to be binding must be made in accordance with the general distribution of powers between the federal government and the States; that therefore a treaty cannot infringe on the police powers or reserved rights of the States. No such view was held by the founders of the government. Under the Articles of Confederation treaties were continually violated by the States, and the framers of the Constitution deliberately planned to prevent such a condition for the future. The opponents of the Constitution in the federal Convention and in the ratifying state conventions protested against the unlimited nature of the treaty-making power.

The Constitution provides that all treaties made "*under the authority of the United States*" shall be the supreme law of the land. The clause immediately preceding this says: "This Constitution, and the laws of the United States which shall be made *in pursuance thereof*," etc. That is to say, the laws enacted by Congress must be made *in pursuance of* the Constitution, but in the case of treaties the only limitation is that they must be made "*under the authority of the United States*." A foreign nation in negotiating a treaty does not have to inquire whether it is in conflict with the Constitution of the United States or the constitutions and the laws of the States; the only point it has to safeguard is that the treaty shall be negotiated under the authority of the President and shall be ratified by the Senate.

A treaty dealing with a question not properly the subject of international agreement would not be valid, that is to say the treaty-making power must be exercised in good faith. The status of aliens is undoubtedly a proper subject of treaty negotiation. While, therefore, a case might arise in which a treaty would be declared unconstitutional by the Supreme Court of the United States, such a decision is hardly a possibility in the case we are now considering. While there are to be found in the opinions of the Supreme Court certain *dicta* to the effect that a treaty that invades the reserved rights of a State is unconstitutional, no case has been decided that way. On the other hand

there are a number of cases in which treaties have been upheld, notwithstanding the fact that they have invaded the reserved rights of the States.

In the California case, however, it does not appear to be a case of legal right but a question of policy. The Japanese resent discrimination of any kind particularly where racial antipathy is present. The repeated protests of Japan have created a serious situation. After all it is not the California law which discriminates against the Japanese, but the United States law which excludes them from naturalization. The United States would have a perfect right to pass an act allowing Japanese to come freely to our shores and to become citizens. As citizens of the United States California could not under any pretense of police powers or reserved rights discriminate against them, but it is not likely that the United States will adopt such a policy.

Meanwhile the present legal status of Japanese immigration is very unsatisfactory, and may be changed by Japan at will. The situation therefore calls for treaty regulation. What are we to do about it? What will Japan be willing to do? These are questions of a very delicate nature that will require careful and patient handling on the part of Japan as well as on the part of the United States. The surprising thing is that Japan gives no evidence of regarding patience as a virtue. To discern her real motive is a difficult problem and the conjectures that naturally arise are not calculated to promote peace and friendly feeling.

Thus far, we have said nothing about Hawaii or the Philippines. It may be seriously questioned whether Japan wants either. Her experience in Formosa is not encouraging. She is bent rather on westward expansion into the continent of Asia. But the Philippines are a sort of hostage to American fortune in the Orient. We must be conciliatory to Japan in Manchuria, in Hawaii, even in California, or Japan will seize the Philippines and coolly challenge us to take them back! The Philippines are a serious handicap to American diplomacy because they are an advanced and indefensible outpost. War with Japan is, in my judgment, not a present probability—hardly an immediate pos-

sibility—but peace with Japan does not rest so much on traditional friendship or a sense of past obligations as on Japan's present inability to finance a war, and on our present inability to defend the Philippines in the event of war. In assuming such an aggressive attitude in the spring of 1913 Japan was merely taking advantage of our temporary embarrassment to extort from us certain concessions. With the Philippines exposed to attack, the Hawaiian Islands inadequately fortified, the Panama Canal not then completed, and the Mexican situation on our hands, she thought the time was favorable for a diplomatic move. In this she displayed greater shrewdness than wisdom. The Japanese government will be satisfied with nothing short of the admission of Japanese immigrants to American citizenship, and this we are not likely to grant. The Pacific coast states do not want the Japanese to come to their shores. It would be a serious mistake, therefore, for the United States government to yield to Japanese pressure. Concessions would mean more Japanese and more Japanese would mean the further development of race antagonism and the further straining of diplomatic relations.

The real point of offense is that the law of the United States limits naturalization to "white" persons and persons of "African" nativity or descent. Under the interpretation of this statute, which was passed in 1870, members of the yellow races are excluded from citizenship. The Japanese resent being classified with the non-progressive yellow races. They feel that as a race they have made good and should be treated on a par with the races of Europe. They claim that on the average they are superior to the European immigrants of today. This is perfectly true, and it is further true that the American people do not regard the Japanese as in any sense an inferior race. On the contrary they challenge our highest admiration, and the superior industrial efficiency of the Japanese laborer is one of the main causes of the anti-Japanese agitation in California. But when all this is said the fact remains that the Japanese springs from a historical environment which has no traditions in common with ours, that he has an intense pride of race and nationality, that his standard of living is different from ours, and that, notwithstanding the fact that

he has remarkable powers of adaptability, it is very doubtful whether he has either the desire or the capacity for assimilation.

The Japanese question has been discussed too much as if it were a local issue, when as a matter of fact the real issue is a question of national policy. Either Japan must agree to regulate the immigration question by treaty, or Congress will be compelled to regulate it by legislation.